

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Federal-State Joint Board on Universal Service
AT&T Communications of NY and AT&T
Communications of California Petition for Waiver of
Section 54.802(a) of the Commission's Rules
CC Docket No. 96-45

ORDER

Adopted: January 26, 2007

Released: January 26, 2007

By the Associate Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request by AT&T Communications of NY and AT&T Communications of California (collectively, AT&T), eligible telecommunications carriers (ETC), for a waiver of section 54.802(a) of the Commission's rules. For the reasons set forth below, we find that AT&T has demonstrated that good cause warrants granting this waiver.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended, provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." Section 254(e) states that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.

3. Pursuant to section 54.802 of the Commission's rules, an ETC that is providing service within an area served by a price cap local exchange carrier must file certain data with the Universal Service Administrative Company (USAC) to receive Interstate Access Support (IAS) funding. Specifically, an ETC must submit line count data showing separately the number of residential/single-line business lines and multi-line business lines within its study area on a quarterly basis. Mandatory line

1 AT&T Petition for Waiver of Section 54.802(a) of the Commission's Rules, CC Docket No. 96-45, filed October 17, 2006 (Petition). See also 47 C.F.R. § 54.802(a).

2 47 U.S.C. § 254(e).

3 Id.

4 See 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.802(a), 54.809, 54.903, 54.904.

5 See 47 C.F.R. § 54.802(a).

6 Id.

count data are due on the last business day of March, June, September, and December of each year.<sup>7</sup> USAC uses line count data filed in December to calculate first quarter support for the following calendar year, line count data filed in March to calculate second quarter support for the current calendar year, line count data submitted in June to calculate third quarter support for the current year, and line count data filed in September to calculate fourth quarter support for the current year.<sup>8</sup>

4. *AT&T's Petition for Waiver.* On October 17, 2006, AT&T filed a request for waiver of section 54.802(a) of the Commission's rules to permit AT&T to receive IAS funding for the fourth quarter of 2006.<sup>9</sup> AT&T explains that, due to an oversight by the personnel responsible for compiling and filing the line count data, it missed the Friday, September 29, 2006, filing deadline.<sup>10</sup> After realizing it missed the deadline, AT&T submitted the data to USAC on Tuesday, October 3, 2006, four days (two business days) after the deadline.<sup>11</sup> After receiving the data, USAC informed AT&T it would not accept it unless the Wireline Competition Bureau waives section 54.802(a).<sup>12</sup>

5. AT&T argues that good cause exists for granting its request for waiver of section 54.802(a) of the Commission's rules.<sup>13</sup> AT&T contends that the waiver will serve the public interest because IAS funding is vital to assuring affordable telephone service.<sup>14</sup> AT&T emphasizes that this is the first time it has missed a line count data filing deadline and it has taken steps to ensure it will not miss future deadlines.<sup>15</sup> Specifically, AT&T has instituted a two-part process to ensure the required data is timely submitted.<sup>16</sup> First, the personnel responsible for filing the line count data will be electronically notified of the deadlines one month, two weeks, and again one week prior to the filing date.<sup>17</sup> Second, two weeks before each filing deadline, AT&T will conduct quarterly "Management Reviews" of the personnel responsible for collecting and filing the line count data.<sup>18</sup> AT&T also argues that the facts it asserts in its petition are comparable to the facts underlying the Wireline Competition Bureau's grants of similar waiver petitions filed by Citizens Communications and Verizon Communications Inc.<sup>19</sup>

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<sup>7</sup> *Id.* See also *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13060, para. 227 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Utility Counsel*, 265 F.3d 313 (5<sup>th</sup> Cir. 2001).

<sup>8</sup> *CALLS Order*, 15 FCC Rcd at 13061, para. 230.

<sup>9</sup> See Petition at 1.

<sup>10</sup> *Id.* at 1-2

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3-6.

<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> *Id.* at 2, 5.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 5-6; see *Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 16761 (Wireline Comp. Bur. 2005) (*Citizens/Frontier Waiver Order*); *Verizon Communications Inc. Petition for Waiver of Section 54.802(a)*, CC Docket No. 96-45, Order, 21 FCC Rcd 10155 (Wireline Comp. Bur. 2006) (*Verizon Order*).

### III. DISCUSSION

6. We find that AT&T has demonstrated that there is good cause to waive section 54.802(a) of the Commission's rules in order to allow it to receive IAS funding for the fourth quarter of 2006.<sup>20</sup> USAC processes a tremendous amount of line count data each year, therefore, it is administratively necessary to require carriers to meet the line count and certification filing deadlines absent special circumstances.<sup>21</sup> Moreover, it is the responsibility of ETCs to familiarize themselves with any applicable regulations, and to ensure that filings are timely received.<sup>22</sup> In this case, however, we find that strict enforcement of the filing deadline would disproportionately penalize AT&T when considered in light of its actions to remedy its error.

7. The loss of IAS funding could impact the high-cost areas served by AT&T. We are concerned that the loss of the funding may undermine AT&T's investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services. In the *CALLS Order*, the Commission found that IAS provides "explicit support that is specific, predictable, and sufficient to ensure that consumers in all regions of the nation have access to telecommunications services at affordable and reasonably comparable rates."<sup>23</sup> Here, the requested waiver would enable AT&T to continue uninterrupted its efforts to maintain and promote access to advanced services in its high-cost areas.

8. These findings are consistent with previous waivers granted.<sup>24</sup> Here, AT&T promptly attempted to remedy its error by filing its IAS data with USAC two business days after the deadline.<sup>25</sup> AT&T's attempt to cure its error and its subsequent revision of its internal procedures represents a good faith attempt to minimize any negative impact on USAC or other IAS funding recipients.

9. In granting this waiver, we rely on AT&T's commitment to revise its internal procedures to ensure that its filings will be accurately and timely submitted. The revisions include: (1) electronically notifying the personnel responsible for filing the line count data of the filing deadlines one month, two

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<sup>20</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>21</sup> *FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 19 FCC Rcd 8202, 8204, para. 5 (Wireline Comp. Bur. 2004).

<sup>22</sup> See 47 C.F.R. § 0.406. See also *Citizens/Frontier Waiver Order*, CC Docket No. 96-45, 20 FCC Rcd at 16763, para. 7.

<sup>23</sup> See *CALLS Order*, 15 FCC Rcd at 13039, para. 186.

<sup>24</sup> See, e.g., *Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5-Kidder Limited Partnership; and Bismarck MSA Limited Partnership Petition for Waiver of Section 54.307 of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9179, 9181, para. 7 (Wireline Comp. Bur. 2006) (one day late); *Citizens/Frontier Waiver Order*, 20 FCC Rcd at 16764, para. 9 (two business days late); *FiberNet, LLC, Petition for Waiver of FCC Rule Section 54.307(c)(4)*, CC Docket No. 96-45, Order, 20 FCC Rcd 20316, 20317, para. 6 (Wireline Comp. Bur. 2005) (five days late); *Verizon Order*, 21 FCC Rcd at 10157, para. 9 (two business days late).

<sup>25</sup> Petition at 1-2.

weeks, and one week before the deadline; and (2) conducting quarterly “Management Reviews” of its personnel responsible for filing the line count two weeks prior to each deadline to ensure that they have taken all necessary steps to meet the deadline.<sup>26</sup> Accordingly, we find that waiving section 54.802(a) of the Commission’s rules will serve the public interest by preserving and advancing universal service.<sup>27</sup>

10. Nevertheless, we remind carriers that it is their responsibility to ensure that their filings are timely received in the appropriate places, regardless of the time and method of their filings. Carriers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and electronic mail (e-mail).<sup>28</sup> For instance, any carrier receiving funding from the high-cost universal support mechanism may file timely via e-mail at [hcfilings@HCLI.universalservice.org](mailto:hcfilings@HCLI.universalservice.org). Additional information regarding USAC’s filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage filers to use any and all methods they deem necessary to ensure their filings are timely received.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.802(a) of the Commission’s rules, 47 C.F.R. § 54.802(a), filed by AT&T COMMUNICATIONS OF NY AND AT&T COMMUNICATIONS OF CALIFORNIA IS GRANTED.

12. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291 and 1.102 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kirk S. Burgee  
Associate Chief  
Wireline Competition Bureau

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<sup>26</sup> *Id.* at 3.

<sup>27</sup> 47 U.S.C. § 254(b).

<sup>28</sup> We note that, in June 2005, the Commission released a Notice of Proposed Rulemaking seeking comment on ways to improve the management, administration, and oversight of the federal universal service fund. *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, 03-109, 02-60, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005). Among the issues on which the Commission sought comment were filing deadlines. *See id.* at 11328-30, paras. 47-51.